

VIII. REPORTING REQUIREMENTS

33. By no later than 180 days after the Effective Date of this Consent Decree, and every 180 days thereafter, until 180 days after NPC has completed all construction required by Paragraphs 15 (Igniter Installation Project) and 16 (Installation and Operation of Baghouses), NPC shall submit to EPA and NDEP, pursuant to Section XVI (Notices), a report which provides the following for the 180 day period that ended on the reporting date:

a. A status report regarding all work necessary to meet the requirements of Paragraphs 15 (Igniter Installation Project) and 16 (Installation and Operation of Baghouses). This status report shall include, at a minimum, a discussion of the status of any construction or compliance measures (e.g., permitting process, contracting for construction, engineering, or other related activities, anticipated start-up of operations, testing, etc.); problems encountered or anticipated with construction or permitting, together with implemented or proposed solutions; and copies of any documentation provided to, or received from, NDEP, CCDAQM and/or any other permitting agencies, regarding any requirement imposed by this Decree; and

b. A current copy of the Environmental Compliance Plan, required pursuant to Paragraph 18, including a summary of any changes made to the plan since the previous report.

34. NPC shall not claim confidential treatment under, EPA, US Department of Justice, or State regulations for any information disclosed in the audits required pursuant to Paragraph 20, unless that information consists of trade secrets, or proprietary commercial information. If NPC seeks to claim as confidential such information disclosed in an audit report, NPC shall highlight that information wherever it appears, and that claim shall be subject to EPA regulations under 40 C.F.R. Part 2. Nothing in this paragraph shall prevent the Plaintiffs from submitting information containing alleged trade secrets to the Court under seal.

35. Within 60 days of the completion of an audit, as required by Section VI (Environmental Management and Auditing), NPC shall provide EPA and NDEP, pursuant to Section XVI (Notices), a report of any corrective action NPC is undertaking in response to the audit report.

1           36.     On an annual basis, beginning two years after the Effective Date of this Consent  
2 Decree, and continuing until June 30, 2014, NPC shall provide a report containing the following  
3 information:

4                 a.     a description of the CCSD Energy Savings Project as implemented during  
5 the previous year;

6                 b.     a description of any problems encountered in undertaking the CCSD  
7 Energy Project in the previous year and the solutions thereto; and

8                 c.     a detailed analysis of the energy savings achieved to date by the project,  
9 presented both in terms of (i) avoided Kwhs and/or decatherms of natural gas, and (ii) cost  
10 savings, cumulatively and annually, to the CCSD in 2006 dollars. This analysis will reference the  
11 following measurement and verification protocols: International Performance Measurement and  
12 Verification Protocol; the Measurement and Verification Guidelines for Federal Energy Projects;  
13 and the ASHRAE Guidelines on Measuring Energy and Demand Savings.

14           37.     Opacity Exceedance Reporting. Within 10 days of submitting any required  
15 quarterly report concerning opacity emissions to the Director of the State Department of  
16 Conservation and Natural Resources, or his designee, pursuant to Nevada Administrative Code  
17 § 445B.265 (Monitoring systems: Records; Reports), NPC shall provide EPA with a copy of the  
18 report, pursuant to Section XVI (Notices).

19                 a.     If NPC shuts down and ceases operations of Units 1-3, pursuant to  
20 Paragraph 16, it shall not be required to provide EPA with copies of the quarterly reports pursuant  
21 to this Paragraph. However, if NPC later recommences operation of any shutdown Unit, pursuant  
22 to Paragraph 16(a), it shall provide EPA with copies of the quarterly reports, as required by this  
23 Paragraph.

24           38.     NPC shall notify the Plaintiffs in writing, within 15 days of the day NPC first  
25 becomes aware of a violation of any requirement of this Consent Decree, and shall identify its  
26 likely duration, with an explanation of the violation's likely cause and of the remedial steps taken,  
27 or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully  
28 explained at the time the report is due, NPC shall so state in the report. NPC shall investigate the

1 cause of the violation and shall then submit an amendment to the report, including a full  
2 explanation of the cause of the violation, within 45 days of the day NPC becomes aware of the  
3 cause of the violation. Nothing in this Paragraph or the following Paragraph relieves NPC of its  
4 obligation to provide the notice required by Section X (Force Majeure) of this Consent Decree.

5 39. All reports required by this Section shall be submitted as required by Section XVI  
6 (Notices) of this Consent Decree.

7 40. Each report submitted by NPC under this Section shall be signed by a  
8 knowledgeable officer of NPC under penalty of law that the information contained in the report is  
9 true accurate, and complete to the best of his or her knowledge and belief, and shall include the  
10 following certification:

11 I certify under penalty of law that I have examined and am familiar with the  
12 information submitted in this document and all attachments and that, based on my  
13 inquiry of those individuals immediately responsible for obtaining the information  
14 and to the best of my knowledge, information and belief, the information is true,  
15 accurate, and complete. I am aware that there are significant penalties for  
16 submitting false information, including the possibility of fines and imprisonment.

17 41. The reporting requirements of this Consent Decree do not relieve NPC of any  
18 reporting obligations required by the Act or implementing regulations, or by any other federal,  
19 State, or local law, regulation, permit, or other requirement.

20 42. Any information provided pursuant to this Consent Decree may be used by the  
21 Plaintiffs in any proceeding to enforce the provisions of this Consent Decree and as otherwise  
22 permitted by law.

#### 23 IX. STIPULATED PENALTIES

24 43. If NPC fails to pay the civil penalty to the United States, required to be paid under  
25 Section IV (Civil Penalty) of this Decree when due, NPC shall pay a Stipulated Penalty of \$5,000  
26 per day for each day that the payment is late to the United States. Late payment of the civil  
27 penalty to the United States shall be made in accordance with Section IV (Civil Penalty),  
28 Paragraph 11(a), above. Stipulated Penalties shall be paid in accordance with Section IX

(Stipulated Penalties), Paragraph 54, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due to the United States under this Decree, or for Stipulated Penalties for the late payment, as applicable, and shall include the identifying information set forth in Paragraph 11(a), above.

44. If NPC fails to pay the civil penalty to the State of Nevada, required to be paid under Section IV (Civil Penalty), Paragraph 11(b) of this Decree when due, NPC shall pay a Stipulated Penalty of \$5,000 per day for each day that the payment is late to the State of Nevada. Late payment of the civil penalty to the State of Nevada shall be made in accordance with Section IV (Civil Penalty), Paragraph 11(b), above. Stipulated Penalties shall be paid in accordance with Section IX (Stipulated Penalties), Paragraph 55, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due to the State of Nevada under this Decree, or for Stipulated Penalties for the late payment, as applicable, and shall include the identifying information set forth in Paragraph 11(b), above.

45. NPC shall be liable for Stipulated Penalties to the United States and/or the State of Nevada for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

46. Opacity Emission Limits during Opacity Compliance Period. During the Opacity Compliance Period, NPC shall pay stipulated penalties in accordance with Paragraphs 46(a) – (d) for any Opacity Exceedance. Upon demand by either Plaintiff, stipulated penalties due under Paragraphs 46(a) – (d) shall be paid fifty-percent to the United States, in accordance with Paragraph 54, and fifty-percent to the State of Nevada, in accordance with Paragraph 55.

a. Unit #1. If the total of Opacity Exceedances over the previous 11 month period exceeds 134, and the number of Opacity Exceedances for the current calendar month exceeds 13, then NPC shall pay stipulated penalties for each additional Opacity Exceedance during the current calendar month, as follows:

Monthly Opacity Exceedances (six minute averages):	<u>14-24</u>	<u>25-35</u>	<u>36+</u>	
Stipulated Penalty per six minute average over 7:	\$2,500	\$5,000	\$7,500	

b. Unit #2. If the total of opacity exceedances over the previous 11 month period exceeds 162, and the number of opacity exceedances for the current calendar month exceeds 15, then NPC shall pay stipulated penalties for each additional six minute exceedance during the current calendar month, as follows:

Monthly Opacity Exceedances (six minute averages):	<u>16-26</u>	<u>27-37</u>	<u>38+</u>	
Stipulated Penalty per six minute average over 15:	\$2,500	\$5,000	\$7,500	

c. Unit #3. If the total of opacity exceedances over the previous 11 month period exceeds 134, and the number of opacity exceedances for the current calendar month exceeds 13, then NPC shall pay stipulated penalties for each additional six minute exceedance during the current calendar month, as follows:

Monthly Opacity Exceedances (six minute averages):	<u>14-24</u>	<u>25-35</u>	<u>36+</u>	
Stipulated Penalty per six minute average over 13:	\$2,500	\$5,000	\$7,500	

d. Unit #4. If the total of opacity exceedances over the previous 11 month period exceeds 174, and the number of opacity exceedances for the current calendar month exceeds 15, then NPC shall pay stipulated penalties for each additional six minute exceedance during the current calendar month, as follows:

Monthly Opacity Exceedances (six minute averages):	<u>16-26</u>	<u>27-37</u>	<u>38+</u>	
Stipulated Penalty per six minute average over 15:	\$2,500	\$5,000	\$7,500	

47. Compliance Requirements Stipulated Penalties.

1           a.       NPC shall pay a stipulated penalty of \$2,500, per day, for each violation of  
2 any requirement in Paragraphs 7, 15, and/or 17 of this Consent Decree. Upon demand by either  
3 Plaintiff, stipulated penalties due under this Paragraph shall be paid fifty-percent to the United  
4 States, in accordance with Paragraph 54, and fifty-percent to the State of Nevada, in accordance  
5 with Paragraph 55.

6           b.       NPC shall pay a stipulated penalty of \$5,000, per day, for each violation of  
7 any requirement in Paragraph 16 (Installation and Operation of Baghouses) of this Consent  
8 Decree. Upon demand by either Plaintiff, stipulated penalties due under this Paragraph shall be  
9 paid fifty-percent to the United States, in accordance with Paragraph 54, and fifty-percent to the  
10 State of Nevada, in accordance with Paragraph 55.

11       48.       Environmental Management and Auditing Stipulated Penalties. NPC shall pay a  
12 stipulated penalty of \$1,500, per day, for each violation of any deadline in Section VI  
13 (Environmental Management and Auditing). Upon demand by either Plaintiff, stipulated  
14 penalties due under this Paragraph shall be paid fifty-percent to the United States, in accordance  
15 with Paragraph 54, and fifty-percent to the State of Nevada, in accordance with Paragraph 55.

16       49.       Reporting and Recordkeeping Requirements Stipulated Penalties. NPC shall pay a  
17 stipulated penalty of \$1,000 per day, for each violation of the reporting and recordkeeping  
18 requirements of Section VIII (Reporting Requirements) of this Consent Decree. Upon demand by  
19 either Plaintiff, stipulated penalties due under this Paragraph shall be paid fifty-percent to the  
20 United States, in accordance with Paragraph 54, and fifty-percent to the State of Nevada, in  
21 accordance with Paragraph 55.

22       50.       Environmental Project Compliance Stipulated Penalties.

23           a.       NPC shall pay a stipulated penalty of \$2,500, per day, for any failure to  
24 make its application to CCAQMD as required by Paragraph 22 and/or each to provide a copy of  
25 such application to NDEP and EPA, as required by Paragraph 22(a). Upon demand by either  
26 Plaintiff, stipulated penalties due under this Paragraph shall be paid fifty-percent to the United  
27 States, in accordance with Paragraph 54, and fifty-percent to the State of Nevada, in accordance  
28 with Paragraph 55.



1           b.     NPC shall pay a stipulated penalty of \$10,000, per day, for each violation  
2 of the 10 day rolling average requirements in Paragraph 23 (SO<sub>2</sub> Limitations and Operating  
3 Permit Modification). Upon demand by either Plaintiff, stipulated penalties due under this  
4 Paragraph shall be paid fifty-percent to the United States, in accordance with Paragraph 54, and  
5 fifty-percent to the State of Nevada, in accordance with Paragraph 55.

6           c.     If the total cumulative cost savings to CCSD pursuant to Paragraph 24 are  
7 less than \$4,000,000, in 2006 Dollars, NPC shall pay the State of Nevada a stipulated penalty of  
8 the difference between the total cumulative cost savings as determined pursuant to Paragraph  
9 25(c) and \$4,000,000, in accordance with Paragraph 55.

10          d.     NPC shall pay the State of Nevada a stipulated penalty of \$500, per day,  
11 for each violation of the reporting requirements of Paragraph 25 (CCSD Energy Saving Project  
12 Completion Report) of this Consent Decree, in accordance with Paragraph 55.

13          e.     NPC shall pay a stipulated penalty of \$1,000 for each violation of the  
14 requirements in Paragraph 30. Upon demand by either Plaintiff, stipulated penalties due under  
15 this Paragraph shall be paid fifty-percent to the United States, in accordance with Paragraph 54,  
16 and fifty-percent to the State of Nevada, in accordance with Paragraph 55.

17          f.     NPC shall pay a stipulated penalty of \$2,500 for each violation of the  
18 requirements in Paragraph 31. Upon demand by either Plaintiff, stipulated penalties due under  
19 this Paragraph shall be paid fifty-percent to the United States, in accordance with Paragraph 54,  
20 and fifty-percent to the State of Nevada, in accordance with Paragraph 55.

21          51.    Stipulated Penalties under this Section shall begin to accrue on the day after  
22 performance is due or on the day a violation occurs, whichever is applicable, and shall continue to  
23 accrue until performance is satisfactorily completed or until the violation ceases. Stipulated  
24 Penalties shall accrue simultaneously for separate violations of this Consent Decree. NPC shall  
25 pay any Stipulated Penalty within 30 days of receiving a written demand for payment from either  
26 Plaintiff.

27          52.    Either Plaintiff may, in the unreviewable exercise of its discretion, reduce or waive  
28 Stipulated Penalties otherwise due it under this Consent Decree.

1           53. Except as otherwise provided by Paragraph 70, Stipulated Penalties shall continue  
2 to accrue as provided in Paragraph 51, above, during any Dispute Resolution, with interest on  
3 accrued penalties payable and calculated at the rate established by the Secretary of the Treasury,  
4 pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

5           a. If the dispute is resolved by agreement or by a decision of the United States  
6 or State of Nevada, as applicable, that is not appealed to the Court, NPC shall pay accrued  
7 penalties agreed upon or determined to be owing, together with interest, to the United States or  
8 State of Nevada within 30 days of the Effective Date of the agreement or the receipt of the United  
9 States' or State of Nevada's decision or order.

10           b. If the dispute is appealed to the Court and the United States or Nevada  
11 prevail in whole or in part, NPC shall pay all accrued penalties and interest determined by the  
12 Court to be owing, within 60 days of receiving the Court's decision or order, except as provided  
13 in Subparagraph c, below.

14           c. If any Party appeals the District Court's decision, NPC shall pay all  
15 accrued penalties and interest determined to be owing by the appellate court, within 15 days of  
16 receiving the final appellate court decision.

17           54. NPC shall pay Stipulated Penalties owing to the United States by EFT in  
18 accordance with Section IV, Paragraph 11(a), above or by certified or cashier's check in the  
19 amount due, payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-2-1-08653,  
20 and delivered to:

21                   United States Attorney's Office  
22                   District of Nevada  
23                   Attn: Financial Litigation Unit  
24                   333 South Las Vegas Blvd., Lloyd George Federal Bldg.  
25                   Las Vegas, NV 89101

26           55. NPC shall pay Stipulated Penalties owing to the State of Nevada by cashier's  
27 check, made payable to the "State of Nevada – Account for Management of Air Quality," and  
28 sent via registered, certified, or overnight mail to:



1 Mike Elges  
2 Chief, Bureau of Air Pollution Control  
3 Nevada Division of Environmental Protection  
4 901 S. Stewart Street, Suite 4001  
5 Carson City, NV 89701

6 56. Neither NPC nor any of its parent or affiliated corporations shall deduct NPC's  
7 payment of Stipulated Penalties paid under this Section for any tax purpose or otherwise obtain  
8 favorable tax treatment of such payment.

9 57. If NPC fails to pay Stipulated Penalties according to the terms of this Consent  
10 Decree, NPC shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961,  
11 accruing as of the date payment became due.

12 58. Subject to the provisions of Section XIV (Effect of Settlement/Reservation of  
13 Rights) of this Consent Decree, the Stipulated Penalties provided for in this Consent Decree shall  
14 be in addition to any other rights, remedies, or sanctions available to the Plaintiffs for Defendant's  
15 violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is  
16 also a violation of the Act, NPC shall be allowed a credit, for any Stipulated Penalties paid,  
17 against any statutory penalties imposed for such violation.

18 X. FORCE MAJEURE

19 59. For purposes of this Consent Decree, a "Force Majeure Event" is defined as any  
20 event arising from causes beyond the control of NPC, its contractors, or any entity controlled by  
21 NPC that delays or prevents the performance of any obligation under this Consent Decree despite  
22 NPC's best efforts to fulfill the obligation. "Best efforts" include using best efforts to anticipate  
23 any potential force majeure event and to address the effects of any such event (a) as it is occurring  
24 and (b) after it has occurred, such that the delay is minimized to the greatest extent possible.  
25 "Force Majeure" does not include NPC's financial inability to perform any obligation under this  
26 Consent Decree, nor does it include normal inclement weather.

27 60. If any event occurs or has occurred that may delay the performance of any  
28 obligation under this Consent Decree, as to which NPC intends to assert a claim of force majeure,  
NPC shall provide notice in writing, as provided in Section XVI (Notices) of this Consent Decree,  
within seven (7) days of the time NPC first knew of, or by the exercise of due diligence should

1 have know of, the event. Such notification shall include an explanation and description of the  
2 reasons for the delay; the anticipated duration of the delay; a description of all actions taken or to  
3 be taken to prevent or minimize the delay; a schedule for implementation of any measures to be  
4 taken to prevent or mitigate the delay or the effect of the delay; and NPC's rationale for  
5 attributing such delay to a Force Majeure Event. Failure to comply with the above requirements  
6 shall preclude NPC from asserting any claim of Force Majeure. NPC shall be deemed to know of  
7 any circumstance of which NPC, its contractors, or any entity controlled by NPC knew or should  
8 have known.

9 61. NPC shall have the burden of proving, by a preponderance of the evidence, that  
10 each event described in the preceding Paragraph was a Force Majeure Event; that NPC gave the  
11 notice required by the preceding Paragraph; that NPC took all reasonable steps to prevent or  
12 minimize any delay caused by the event; and that any period of delay it claims was attributable to  
13 the Force Majeure Event was caused by that event.

14 62. If the Plaintiffs agree that a delay in NPC's performance of an obligation under  
15 this Consent Decree has been caused by a Force Majeure Event, the Parties shall stipulate to an  
16 extension of time for NPC's performance of the affected compliance requirement by a period not  
17 exceeding the delay actually caused by such event. In such circumstances, the appropriate  
18 modification shall be made pursuant to Section XIX (Modification) where the modification is to a  
19 term of this Consent Decree or is a material modification of any Appendix to this Consent  
20 Decree. In the event that the Parties cannot agree, the matter shall be resolved in accordance with  
21 Section XI (Dispute Resolution). Any extension of time for the performance of the obligations  
22 affected by a Force Majeure Event shall not, of itself, extend the time for performance of any  
23 other obligation required by this Consent Decree.

#### 24 XI. DISPUTE RESOLUTION

25 63. Unless otherwise expressly provided for in this Consent Decree, the dispute  
26 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising  
27 under or with respect to this Consent Decree. However, such procedures shall not apply to  
28

1 actions by the United States or State of Nevada to enforce obligations of the Defendant that  
2 Defendant has not disputed in accordance with this Section.

3 64. Informal Dispute Resolution. Any dispute subject to dispute resolution under this  
4 Consent Decree shall first be the subject of informal negotiations. The dispute shall be  
5 considered to have arisen when the Plaintiffs receive a written Notice of Dispute from Defendant.  
6 Such Notice of Dispute shall state clearly the matter in dispute. The period of informal  
7 negotiations shall not exceed 30 days from the date the Plaintiffs receive the Notice of Dispute,  
8 unless that period is modified by written agreement. If the Parties cannot resolve a dispute by  
9 informal negotiations, then the position advanced by the Plaintiffs shall be considered binding  
10 unless, within 30 days after receiving written notice from the Plaintiffs terminating informal  
11 negotiations, Defendant invokes formal dispute resolution procedures as set forth below.

12 65. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution  
13 procedures, within the time period provided in the preceding Paragraph, by serving on the  
14 Plaintiffs a written Statement of Position regarding the matter in dispute. The Statement of  
15 Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion  
16 supporting Defendant's position and any supporting documentation relied upon by Defendant.

17 66. The Plaintiffs shall serve their Statement of Position within 45 days of receipt of  
18 Defendant's Statement of Position. EPA and NDEP will respond with one combined Statement  
19 of Position, setting forth the position of both EPA and NDEP. The Plaintiffs' Statement of  
20 Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion  
21 supporting that position and any supporting documentation relied upon by the Plaintiffs. The  
22 Plaintiffs' Statement of Position shall be binding on Defendant, unless Defendant files a motion  
23 for judicial review of the dispute in accordance with the following Paragraph.

24 a. Plaintiffs shall maintain an administrative record of all disputes brought  
25 under Paragraph 65. The administrative record shall include all Statements of Position, including  
26 accompanying supporting information and documentation.

27 67. Defendant may seek judicial review of the dispute by filing with the Court and  
28 serving on the Plaintiffs, in accordance with Section XVI (Notices) of this Consent Decree, a

1 motion requesting judicial resolution of the dispute. The motion must be filed within 30 days of  
2 receipt of the Plaintiffs' Statement of Position pursuant to the preceding Paragraph. The motion  
3 shall contain a written statement of Defendant's position on the matter in dispute and shall set  
4 forth the relief requested and any schedule within which the dispute must be resolved for orderly  
5 implementation of the Consent Decree.

6 68. Plaintiffs shall respond to Defendant's motion within the time period allowed by  
7 the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted  
8 by the Local Rules.

9 69. In any dispute brought under Paragraph 67, this Court shall uphold the decision of  
10 the Plaintiffs, unless this Court determines, based on a review of the administrative record  
11 maintained pursuant to Paragraph 66(a), that the Plaintiffs' decision was arbitrary and capricious,  
12 an abuse of discretion or otherwise not in accordance with applicable law.

13 70. The invocation of dispute resolution procedures under this Section shall not, by  
14 itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent  
15 Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with  
16 respect to the disputed matter shall continue to accrue from the first day of noncompliance, but  
17 payment shall be stayed pending resolution of the dispute as provided in Paragraph 53, above. If  
18 Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid  
19 as provided in Section VIII (Stipulated Penalties).

20 71. If any permitting authority, including but not limited to NDEP and/or PUCN, fails  
21 to issue, renew or modify a permit or other approval required pursuant to Section XII (Permits),  
22 or delays the issuance, renewal or modification of such a permit beyond the period required for  
23 the permitting authority to act on the application under applicable law and/or regulation, NPC  
24 may invoke the Dispute Resolution procedures set forth in this Section to request a reasonable  
25 extension of the schedules affected by such failure or delay. If NPC requests Dispute Resolution  
26 pursuant to this Paragraph, stipulated penalties for failure to comply with a requirement of this  
27 Decree affected by the permit delay, shall not apply to the period affected by such failure or delay  
28 and shall not accrue during the period of Dispute Resolution under this Paragraph, provided that:

(i) the delay was not caused by NPC's failure to comply with this Decree; (ii) the delay was not caused by NPC's failure to submit a complete permit application that complied with the applicable laws, regulations, and procedures of NDEP and/or PUCN; and, (iii) NPC continues to meet the requirements of Section XII (Permits).

## XII. PERMITS

72. Unless otherwise required by this Section, in any instance where otherwise applicable law or this Consent Decree requires NPC to secure or modify a permit to authorize construction or operation of any device, including all preconstruction, construction, and operating permits required under federal, state or local law, NPC shall make such application in a timely manner, timely provide additional information as requested by the permitting authority to make its application complete, and otherwise cooperate with any permitting authority as necessary to meet the terms of this Decree. NPC shall pay any fees necessary to secure or modify a permit as required by this Paragraph.

73. When a permit is required, NPC shall complete and submit any application for such permit to the appropriate authorities to allow sufficient time for all legally required processing and review of the permit request, including requests for additional information by the permitting authorities.

74. Incorporation of Consent Decree Requirements into Federally Enforceable Permit or SIP. If not already incorporated in a federally enforceable permit (other than a Title V permit), or an amendment to the SIP, NPC agrees that:

a. no later than six months after the commencement of operation of the Igniter Installation Project, pursuant to Paragraph 15, NPC shall apply to include the requirements and/or limitations enumerated in that Paragraph into either a federally enforceable permit (other than a Title V permit) or an amendment to the SIP;

b. no later than six months after the commencement of operation of the Baghouses, pursuant to Paragraph 16, NPC shall apply to include the requirements and/or limitations enumerated in that Paragraph into either a federally enforceable permit (other than a Title V permit) or an amendment to the SIP; and

1 c. no later than one year after the Effective Date of this Decree, NPC shall  
2 apply to include the requirements and/or limitations of Paragraph 23 (SO2 Limitations and  
3 Operating Permit Modification) into either a federally enforceable permit (other than a Title V  
4 permit) or an amendment to the SIP.

5 d. NPC shall provide EPA with a copy of each permit application required by  
6 this Paragraph, pursuant to Section XVI (Notices), as well as a copy of any permit proposed as a  
7 result of such application.

8 e. NDEP agrees that any application submitted to it by NPC under this  
9 Paragraph shall be reviewed in accordance with applicable laws and regulations.

10 75. Mechanism for Title V Incorporation. The Parties agree that the incorporation of  
11 the requirements of this Consent Decree into the Operating Permit shall be in accordance with  
12 state Title V rules, including applicable administrative amendment provisions of such rules.

13 76. PUCN Approval. No later than 30 days after the Effective Date of this Consent  
14 Decree NPC shall submit a complete application, pursuant to all applicable rules and law, to  
15 PUCN for approval for the inclusion of the Igniter Installation Project, required by Paragraph 15,  
16 and the installation and operation of Baghouses, required by Paragraph 16, into its Integrated  
17 Resource Plan.

18 77. Notwithstanding the reference to the Title V Permit in this Decree, the  
19 enforcement of the permit shall be in accordance with its own terms and Act. The Title V Permit  
20 shall not be enforceable under this Consent Decree, although any term or limit established by or  
21 under this Consent Decree shall be enforceable under this Consent Decree regardless of whether  
22 such term has or will become part of a Title V permit, subject to the terms of Section XX  
23 (Termination as to Completed Tasks).

24 XIII. INFORMATION COLLECTION AND RETENTION

25 78. The United States and/or the State of Nevada and its representatives, including  
26 attorneys, contractors, and consultants, shall have the right of entry into the Facility, at all  
27 reasonable times, upon presentation of credentials, to:  
28



- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States and/or State of Nevada in accordance with the terms of this Consent Decree;
- c. obtain documentary evidence, including photographs, emission sampling, and similar data; and
- d. assess Defendant's compliance with this Consent Decree.

79. Defendant shall retain, and shall instruct its contractors and agents to preserve, copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession, or that come into its or its contractors' or agents' possession, and that relate to Defendant's performance of its obligations under this Consent Decree. Such documents, records, or other information shall be retained for a minimum of five years from the date the document, record, or other information was created or received by the Defendant. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, the United States or the State of Nevada may request copies of any documents, records, or other information required to be maintained under this Paragraph.

80. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph, and, upon a request by the United States made within 75 days after the United States' receipt of NPC's notice pursuant to this Paragraph, NPC shall deliver any such documents, records, or other information to EPA. NPC may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If NPC asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by NPC. However, no documents, records, or other information created or



1 generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of  
2 privilege.

3 81. NPC may also assert that information required to be provided under this Section is  
4 protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any  
5 information that NPC seeks to protect as CBI, NPC shall follow the procedures set forth in 40  
6 C.F.R. Part 2.

7 82. This Consent Decree in no way limits or affects any right of entry and inspection,  
8 or any right to obtain information, held by the United States or the State of Nevada pursuant to  
9 applicable federal or State laws, regulations, or permits, nor does it limit or affect any duty or  
10 obligation of NPC to maintain documents, records, or other information imposed by applicable  
11 federal or State laws, regulations, or permits.

12 XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

13 83. This Consent Decree resolves the civil claims of the United States and NDEP for  
14 the violations alleged in the Complaint filed in this action through the date of lodging or alleged  
15 in the following Notices: Docket Nos. R9-06-10 (EPA); 1862 through 1907 (NDEP); and 1942  
16 through 1951 (NDEP).

17 84. The United States and State of Nevada reserve all legal and equitable remedies  
18 available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph  
19 83. This Consent Decree shall not be construed to limit the rights of the United States and/or the  
20 State of Nevada to obtain penalties or injunctive relief under the Act or implementing regulations,  
21 or under other federal or State laws, regulations, or permit conditions, except as expressly  
22 specified in Paragraph 83. The United States and the State of Nevada further reserve all legal and  
23 equitable remedies to address any imminent and substantial endangerment to the public health or  
24 welfare or the environment arising at, or posed by, the Facility.

25 85. This Consent Decree is not a permit, or a modification of any permit, under any  
26 federal, State, or local laws or regulations. NPC is responsible for achieving and maintaining  
27 compliance with all applicable federal, State, and local laws, regulations, and permits; and NPC's  
28 compliance with this Consent Decree shall be no defense to any action commenced pursuant to

any such laws, regulations, or permits. The United States and State of Nevada do not, by their consent to the entry of this Consent Decree, assert in any manner that NPC's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. §§ 7401 - 7671q, or with any other provisions of federal, State, or local laws, regulations, or permits.

86. This Consent Decree does not limit or affect the rights of the Parties against any third party, not a party to this Consent Decree, nor does it limit the rights of any third party, not a party to this Consent Decree, against NPC, except as otherwise provided by law.

87. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Consent Decree.

#### XV. COSTS

88. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and/or the State of Nevada shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by NPC.

#### XVI. NOTICES

89. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

##### To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-06982

and

Chief, Environmental Enforcement Section  
Attn: DOJ # 90-5-2-1-08653 (Boer)  
United States Department of Justice  
301 Howard Street, Suite 1050  
San Francisco, California 94105

and

1 Allan Zabel, ORC-2  
2 U.S. Environmental Protection Agency, Region IX  
3 75 Hawthorne Street  
4 San Francisco, California 94105

4 To EPA:

5 Director, Air Division (AIR-1)  
6 Attn: Steve Frey  
7 U.S. Environmental Protection Agency, Region IX  
8 75 Hawthorne Street  
9 San Francisco, California 94105

8 and

9 Allan Zabel, ORC-2  
10 U.S. Environmental Protection Agency, Region IX  
11 75 Hawthorne Street  
12 San Francisco, California 94105

11 To State of Nevada:

12 Mike Elges  
13 Chief, Bureau of Air Pollution Control  
14 Nevada Division of Environmental Protection  
15 901 S. Stewart Street, Suite 4001  
16 Carson City, NV 89701

15 and

16 William Frey  
17 Senior Deputy Attorney General  
18 Nevada Department of Justice  
19 100 North Carson Street  
20 Carson City, NV 89701

19 To NDEP:

20 Mike Elges  
21 Chief, Bureau of Air Pollution Control  
22 Nevada Division of Environmental Protection  
23 901 S. Stewart Street, Suite 4001  
24 Carson City, NV 89701

24 To Defendant:

25 Josh M. Reid  
26 Parsons Behle & Latimer  
27 201 S. Main Street, Suite 1800  
28 Salt Lake City, Utah 84121

and

1 William M. Clark  
2 Generation Executive and Responsible Official  
3 Nevada Power Company  
4 6226 West Sahara Avenue  
5 Las Vegas, NV 89151

6 and

7 Starla S. Lacy  
8 Director, Environmental Services  
9 Nevada Power Company  
10 6226 West Sahara Avenue  
11 Las Vegas, NV 89151

12 90. All notifications, communications, or submissions made pursuant to this Section  
13 shall be sent by overnight mail or by certified or registered mail, return receipt requested. All  
14 notifications, communications, and transmissions sent by overnight, certified or registered mail  
15 shall be deemed submitted on the date they are postmarked.

16 91. Any Party may change either the notice recipient or the address for providing  
17 notices to it by serving all other Parties with a notice, pursuant to this Section, setting forth such  
18 new notice recipient or address.

19 XVII. EFFECTIVE DATE

20 92. The Effective Date of this Consent Decree shall be the date upon which this  
21 Consent Decree is entered by the Court.

22 XVIII. RETENTION OF JURISDICTION

23 93. The Court shall retain jurisdiction over this case until termination of this Consent  
24 Decree, for the purpose of resolving disputes arising under this Decree or entering orders  
25 modifying this Decree, pursuant to Sections XI (Dispute Resolution) and XIX (Modification), or  
26 effectuating or enforcing compliance with the terms of this Decree.

27 XIX. MODIFICATION

28 94. The terms of this Consent Decree or its appendices contains the entire agreement  
of the parties and may be modified only by a subsequent written agreement signed by all the  
Parties. Where the modification constitutes a material change to any term of this Decree, it shall  
be effective only upon approval by the Court.

1 XX. TERMINATION AS TO COMPLETED TASKS

2 95. As soon as NPC completes any construction required by this Decree, or completes  
3 any requirement that will not recur, NPC may seek termination of that portion of the Decree that  
4 dictated such requirement.

5 96. Following receipt by the Plaintiffs of NPC's Request for Termination, the Parties  
6 shall confer informally concerning the Request and any disagreement that the Parties may have as  
7 to whether NPC has satisfactorily complied with the requirements for termination of the requested  
8 portion of this Consent Decree. The Plaintiffs shall determine, and notify NPC, of any  
9 disagreement as to whether NPC has satisfactorily complied with the requirements for  
10 termination as requested pursuant to this Section, no later than 45 days after the NPC's request is  
11 received by the Plaintiffs. If the United States and the State of Nevada agree that NPC has met  
12 the requirements of the portion of the Decree, the Parties shall submit, for the Court's approval, a  
13 joint stipulation terminating the relevant portion of the Decree.

14 97. If the United States and State of Nevada do not agree that the requested portion of  
15 the Decree may be terminated, NPC may invoke Dispute Resolution under Section XI (Dispute  
16 Resolution) of this Decree.

17 XXI. PUBLIC PARTICIPATION

18 98. This Consent Decree shall be lodged with the Court for a period of not less than 30  
19 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States  
20 reserves the right to withdraw or withhold its consent if the comments regarding the Consent  
21 Decree disclose facts or considerations indicating that the Consent Decree is inappropriate,  
22 improper, or inadequate. Defendant consents to entry of this Consent Decree without further  
23 notice.

24 XXII. SIGNATORIES/SERVICE

25 99. Each undersigned representative of the Parties certifies that he or she is fully  
26 authorized to enter into the terms and conditions of this Consent Decree and to execute and  
27 legally bind the Party he or she represents to this document.  
28

100. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

101. NPC agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States and the State of Nevada have notified NPC in writing that they no longer support entry of the Decree.

102. NPC agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

### XXIII. INTEGRATION

103. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

### XXIV. FINAL JUDGMENT

104. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State of Nevada, and NPC. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58. This Consent Decree serves as the final adjudication of claims raised by the NDEP and EPA in paragraphs 4 and 5.

### XXV. APPENDICES

105. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A, regarding contracts between NPC, its parent or affiliated corporations, and third party contractors; and

1           Appendix B, which is entitled "Environmental Compliance Plan for Nevada Power  
2   Company's Reid Gardner Generating Station in Moapa, Nevada."



**ORDER**


IT IS SO ORDERED:

  
\_\_\_\_\_  
PHILIP M. PRO, UNITED STATES DISTRICT JUDGE

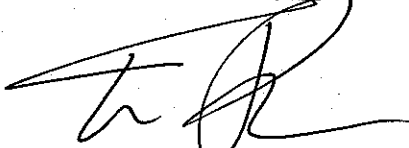
DATED: June 14, 2007

1 **FOR PLAINTIFF UNITED STATES OF AMERICA:**

2  
3 Dated: 3/7/02


  
MATTHEW J. MCKROWN  
Acting Assistant Attorney General  
Environment & Natural Resources Division  
U.S. Department of Justice

4  
5  
6  
7 Dated: 3/12/07

  
TOM J. BOER  
Trial Attorney  
Environmental Enforcement Section  
U.S. Department of Justice  
301 Howard Street, Suite 1050  
San Francisco, California 94105  
Telephone: (415) 744-6471

1 **FOR PLAINTIFF UNITED STATES OF AMERICA:**

2  
3  
4  
5  
6 Dated: March 5, 2007

  
GRANTA NAKAYAMA  
Assistant Administrator  
Office of Enforcement and Compliance  
Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue  
Mail Code 2201A  
Washington, D.C. 20460

7  
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12  
13 OF COUNSEL:

14 ANDREW C. HANSON  
15 Attorney Advisor  
16 U.S. Environmental Protection Agency  
17 1200 Pennsylvania Ave. NW  
18 Washington, DC 20460  
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1 **FOR PLAINTIFF UNITED STATES OF AMERICA:**

2  
3 Dated: \_\_\_\_\_

4 GRANTA NAKAYAMA  
5 Assistant Administrator  
6 Office of Enforcement and Compliance  
7 Assurance  
8 U.S. Environmental Protection Agency  
9 1200 Pennsylvania Avenue  
10 Mail Code 2201A  
11 Washington, D.C. 20460

12  
13  
14 Dated: 06 MARCH 2007

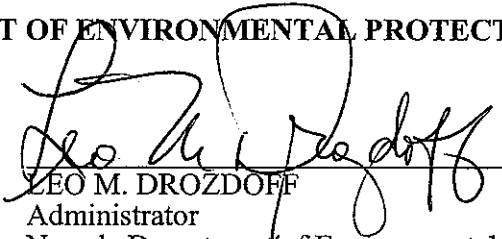
15 Wayne Nastri  
16 WAYNE NASTRI  
17 Regional Administrator  
18 U.S. Environmental Protection  
19 Agency, Region 9  
20 San Francisco, CA

21  
22  
23 OF COUNSEL:

24 ALLAN ZABEL  
25 Senior Counsel  
26 U.S. Environmental Protection Agency, Region 9  
27 75 Hawthorne Street  
28 San Francisco, CA 94105


1 **FOR PLAINTIFF NEVADA DEPARTMENT OF ENVIRONMENTAL PROTECTION:**

2  
3 Dated: 3/1/07

4   
LEO M. DROZDOFF  
Administrator  
Nevada Department of Environmental  
Protection  
901 S. Stewart Street, Suite 4001  
Carson City, Nevada 89701

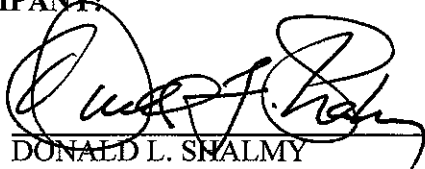
1 **FOR DEFENDANT NEVADA POWER COMPANY:**

2  
3 Dated: 2-15-07

  
4 **WALTER M. HIGGINS, III**  
5 Chairman of the Board, President and C.E.O.  
6 Sierra Pacific Resources  
7 6100 Neil Road  
8 Reno, NV 89511  
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1 **FOR DEFENDANT NEVADA POWER COMPANY:**

2  
3 Dated: 2/28/07

  
DONALD L. SHALMY  
President, Nevada Power Company  
6226 West Sahara Avenue  
Las Vegas, Nevada 89146